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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1512

CONSTANCE R. JOHNSON, *Petitioner*,

v.

JOSEPH V. GARTLAN, JR., and FREDONA M. GARTLAN, *Respondents*.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Was the Circuit Court correct in its finding of fact that a taxpayer ratified a sale of his real estate in 1962 by the Internal Revenue Service for delinquent income taxes, where he received notices, made no objection to the sale, accepted the surplus proceeds in 1964, kept

them until his death in 1967, and the rights of Respondents as innocent purchasers for value have intervened?

STATUTES INVOLVED

Internal Revenue Code of 1954

§ 6339 - Legal Effect of Certificate of Sale of Personal Property and Deed of Real Property.

* * *

(b) Deed of Real Property.—In the case of the sale of real property pursuant to section 6335—

(1) Deed as Evidence.—The deed of sale given pursuant to section 6339 shall be prima facie evidence of the facts therein stated; and

(2) Deed as Conveyance of Title.—If the proceedings of the Secretary or his delegate as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

STATEMENT OF THE CASE

Supplementing Petitioner's statement of facts, the taxpayer-landowner, Johnson, had had business experience as a restaurant operator as well as being a taxi driver; his land was sold subject to prior judgments and real estate taxes totalling $5,936; and his financial statement filed with the Internal Revenue Service reflected a land cost to him of $3,000, with a forced sale value of $3,000. (App. 69a, 77a). The efforts of the Internal Revenue Service to get a better price for the land included holding the sale in Alexandria, Virginia rather than in rural Prince William County for the convenience of all parties, due to the December weath-

er; and the mailing of sale notices to potential bidders, as well as notice of seizure and sale to Johnson. The revenue officer concluded that a sealed bid sale would bring a better price. The Revenue Service experience in Northern Virginia has been that sealed bid sales of real estate bring better prices than public auctions, and that most real estate seizures are redeemed within a year. This sale was conducted in accordance with their customary practice. (App. 32a, 79a, 81a, 89a-92a).

Where a sale is held outside the county where the property is located, the notice of sale by the officer is, under the provisions of the Internal Revenue Manual, the order of the District Director for the sale to take place there. Such notice was given and advertised. (App. 43a, 50a, 84a, 86a, 92a). The Revenue Service does not divide real estate into tracts for tax sale purposes, but does sell single lots individually. This is due to the fact that competing liens can be a cloud on title, and interest of the taxpayer is sold, a tax sale does not bring near fair market value. When it files a tax lien there is frequently too little equity to give the lien much value at a forced sale. This sale brought $135 per acre. The appraisers' opinions of its then value varied from $128 to $250 per acre. (App. 77a-79a).

On September 20, 1969, almost seven years after the sale, Petitioner granted an option to sell the land to Hall Associates, Inc. for $1, which is all she will get. (App. 51a, 95a, 96a).

Respondents obtained the land partly by gift from Manderfield, partly by issuing their $32,000 note to pay for their interest. This was in March, 1967, over

four years after the sale. They have expended over $6,630 in real estate taxes alone; they relied on the Government deed and thought they had an insurable title.

A chronology of events follows:

July 2, 1962—James N. Johnson filed statement of financial condition with I.R.S. declaring forced sale value of property to be $3,000, encumbrances $5,936.

July 25, 1962—Notice of Federal tax lien issued against Johnson's property.

Aug. 1, 1962—Federal tax lien docketed in Prince William County.

Oct. 25, 1962—Notice of Seizure mailed to Johnson.

Nov. 8, 1962—Notice of sealed bid sale issued by I.R.S., advertised and posted at three public places in Prince William County.

Dec. 3, 1962—Sealed bids opened by I.R.S. at Alexandria, Virginia; G. P. Manderfield top bidder at $16,843.82.

Jan. 2, 1963—Certificate of Sale issued by I.R.S. to purchaser.

Jan. 3, 1963—Letter from I.R.S. to Johnson advising of his one year right of redemption.

Feb. 14, 1964—Deed issued by I.R.S. to Frank Hoss, Jr., Trustee (assignee of purchaser).

Oct. 15, 1964—Authorization by I.R.S. for release to Johnson of sale proceeds ($16,825.38) remaining after deduction of costs and delinquent taxes of $3,189.03.

Oct. 30, 1964—Treasury check for balance of proceeds ($13,636.35) issued to and endorsed by Johnson.

1965—Hall Associates, Inc. attempt to get tax deed to land from Prince William County.

March 27, 1967—Deed from purchaser's assignee to Respondents who signed note for $32,000 to purchase half interest.

April 1, 1967—James N. Johnson died.

April 10, 1967—Order granting administration to Petitioner by U. S. District Court for the District of Columbia. This land not listed as asset of estate in petition, nor otherwise.

Sept. 20, 1969—Option of sale granted by Petitioner to Hall Associates, Inc., for consideration of $1.

Oct. 3, 1969—Action to quiet title filed by Petitioner.

ARGUMENT AND AUTHORITIES

I. THE DECISION OF THE FOURTH CIRCUIT THAT JAMES JOHNSON RATIFIED THE TAX SALE WAS CORRECT.

A. The Decision Was Basically Factual.

The Circuit Court held that the facts showed a ratification of the sale by Johnson in accepting and cashing the Treasury check; while there was no indication that an explanation accompanied the check to show it was for proceeds of the tax sale, "it strains our imagination to believe Johnson did not know that was the reason for the payment. No honest man pockets over $13,000 if he does not know what it is for, without asking the drawer for an explanation". (470 F.2d 1106).

Johnson knew what kinds of taxes he owed, the amounts, and must have been satisfied with the sale. His signed financial statement of July 1962 details prior judgments and liens on this land far in excess of what he estimated it to be worth. The statement is not that of an ignorant person; it shows some detail and care in preparation. Moreover, he had business experience as a restaurant operator, as well as being a taxi driver. There was good reason for him to ratify the sale and accept the $13,636.25.

The Fourth Circuit decision turns on its own facts. There is no conflict with other Circuit Court decisions.

B. The Decision Was in Accord With Virginia Law.

The Court found that this case fell within the general rule that acceptance of the proceeds from a contested sale constitutes ratification of the sale. The three Virginia cases cited, i.e. *Hiatt* v. *Tompkins,* 176 Va. 82, 10 S.E. 2d 489; *Patterson's Executors* v. *Patterson,* 144 Va. 113, 131 S.E. 217; and *Camp. Mfg. Co.* v. *Green,* 129 Va. 360, 106 S.E. 394, all involved factual situations in which there had been defects in sales of real estate conducted by executors or others acting under similar authority. In each case a disgruntled heir or his assignee tried to escape the consequences of accepting the proceeds of a sale by trying, in the light of hindsight, to upset a sale of realty; and all failed. Acceptance of sale proceeds constitutes express ratification. *Camp Mfg. Co.* v. *Green, supra.*

While the Circuit Court did not base its findings on estoppel, in addition to its finding of ratification, it would have been justified under the Virginia cases in doing so. Each of the cases above held that accept-

ing the proceeds of sale, or allowing the purchaser to change his position, or being silent and delaying in asserting one's claim, would constitute estoppel.

Every element of estoppel is present here in Respondents' favor: reliance on the I.R.S. sale, expenditure of substantial funds for taxes and other expenses in protecting the land, the rise in value of the land, the incurring of substantial purchase money debt, and the passage of over ten years since the sale.

Estoppel is an equitable doctrine. Contrast the equities in favor of Respondents, innocent purchasers for value, with Petitioner's optionee, Hall Associates, Inc. who paid her $1, which she testified is all she gets.

In *Stubblefield* v. *Husband,* 341 Mo. 38, 106 S.W.2d 419, the Court described the plea of ignorance of the effects of a defective tax sale of real estate in these words, p. 422:

> "We also hold that the plea of estoppel was not unavailing because Hall was an ignorant man and did not appreciate the legal significance of his act. By the very fact of his taking down the surplus, he must have known that there was a tax sale, and he cannot, because of his ignorance, be upheld in taking money with one hand and claiming the land with the other."

See also *Procter* v. *Nance,* 222 Mo. 104, 119 S.W. 409, 132 Am. St. Rep. 555. To the same effect is *Ballinger* v. *Sarkeys,* 360 P.2d 515 (Okla. Sup. Ct.).

Under the doctrine of *Erie R. Co.* v. *Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, the Court was right in following Virginia substantive law, unless

Congress in enacting the tax foreclosure statutes conveys its purpose of clearly changing the Federal-state balance. *U.S.* v. *Bass,* 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed. 2d 488. This it has not done. Congress has stated that the tax deed to Respondents' predecessor in title is valid and "shall be considered and operate as a conveyance of all the right, title and interest the party delinquent had . . ." in the real estate if the sale is conducted "substantially in accordance with the provisions of law, . . .". Section 6339(b)(2), I.R.C.

Petitioner attacks the I.R.S. for holding the sale in Alexandria rather than in Prince William County where the land was situated. The record discloses a delegation of authority to the agent to hold the sale in Alexandria; but of even more substance was the uncontradicted testimony that a better price could be obtained in December at a public sale under sealed bids in Alexandria, a convenient population center, than was obtainable in Prince William County. The I.R.S. emphasizes getting the maximum number of bidders to a sale. (App. 50a).

Another attack centered on sale of the land as whole rather than dividing it, since the statute refers to a determination by the I.R.S. that the land was not divisible. This determination was in effect made. Moreover, subdividing the land which is encumbered with judgments and tax liens, with an uncooperative landowner, would appear beyond the scope of duties imposed by Congress on the revenue officers of the I.R.S., except at the risk of subjecting the Government to the claim that the land has been irreparably damaged for further subdivision purposes, or valuable road frontage has been taken, access ruined, etc. Skilled engineers and planners are required for subdividing land.

Congress hardly intended to put the Revenue Service into that business.

The third attack was that the Revenue Service did not give notice to Johnson of the seizure of his land. But the agent testified that he did give such notice, and his testimony was uncontradicted. It was also documented in the I.R.S. records.

The case of *Estate of Burrough* v. *American Security & Trust Co.,* F.2d (C.A.D.C.), a will caveat case cited by Petitioner, does not support her position. The facts there did not establish an estoppel under the Court's statement that "estoppel requires prejudice wrought by detrimental reliance". But they do here. The District of Columbia statutes, as do other states, provide for the filing of a caveat, or a will contest suit; but a beneficiary who has taken benefits under the will is subject to being estopped to accept and then reject such benefits where prejudice to other parties results, and he must make restitution of the benefits. In the *Burrough case, supra,* there was such a caveat; there was none here. Had this been a will case, there would still be estoppel factors strong enough to prevent Petitioner's recovery. In any event, the words of Judge Tamm are appropriate in describing this Petitioner:

"Heads I win—Tails you lose".

It would be grossly inequitable if Petitioner should be permitted to disavow the sale after her father accepted the surplus proceeds, keeps them two and a half years and dies; Petitioner inherits his estate, waits another two and a half years and then, having granted a $1 option, brings suit for her optionee. Her father's

ratification, plus his and her five year combined laches, are binding on her. *Patterson's Executors* v. *Patterson, supra.*

While there is no Federal statute, Virginia has a two year statute of limitations on suits to upset tax sales, § 58-1064, Code of Virginia. By analogy this evidences what will be deemed laches in Federal Courts. *Glidden* v. *Isbandtsen Co.,* 335 F.2d 125, 127 (C.A. 4th).

Both the majority and minority opinions in *Estate of Burrough, supra,* rely on *Utermehle* v. *Norment,* 197 U.S. 40, 25 S.Ct. 291, 49 L.Ed. 655. That case likewise affords Petitioner no comfort; it supports Respondents. It stands foursquare for the principle that a party taking the benefit of a will provision in his favor is estopped to say the will is invalid where there has been a change of position by other parties; that ignorance of the law and of evidence on which to contest a will do not avail in the absence of fraud, imposition or misrepresentation, where there has been extreme negligence and the original situation cannot be restored. That applies to Petitioner. Respondents were innocent purchasers when they bought four years after the sale. In reliance on the Government's deed and the absence of any challenge to it, they thought the title was good and they accordingly obligated themselves. They should not be ejected.

CONCLUSION

This case is factual. No important principle of law is presented. There is no conflict between circuits. The decision below found ratification on the facts and there is compelling evidence to support it.

Respondents are bearing what should be the Government's burden in this case. If this sale and others like it should be invalidated despite the clear expression of Congressional intent to the contrary as set forth in Section 6339(b)(2), I.R.C., the effect on future tax sales is difficult to calculate.

The Petition for Writ of Certiorari should be denied.

Respectfully,

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Certificate of Service

I hereby certify that a true copy of the foregoing Brief for Respondents in Opposition was mailed, postage prepaid, to Mark P. Friedlander, Jr., 2018 North 16th Street, Arlington, Virginia, 22201, the day of June, 1973.

CARRINGTON WILLIAMS